

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

Case Number 17 BK 3283-LTS
PROMESA Title III

In re:)
)
THE FINANCIAL OVERSIGHT AND)
MANAGEMENT BOARD FOR PUERTO RICO.)
)
as representative of)
)
THE COMMONWEALTH OF PUERTO RICO,)
et al.,)
)
Debtors,)

REMOTE VIDEO-RECORDED DEPOSITION OF OJAS N. SHAH

The remote video-recorded deposition upon oral examination of OJAS N. SHAH, a witness remotely sworn by me, Tara Gandel Hudson, RPR, CRR, a Notary Public in and for the County of Hancock, State of Indiana, taken on behalf of Cantor-Katz Collateral Monitor LLC, with the witness located in Florham Park, Morris County, New Jersey, on the 6th day of October, 2021, scheduled to commence at 9:30 a.m., pursuant to the Federal Rules of Civil Procedure with written notice as to the time and place thereof.

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1 (9:41 a.m.)

2 THE VIDEOGRAPHER: Okay. We are now on the
3 video record. Today is October 6, 2021. Time
4 is approximately 9:41 a.m.

5 We are here in the matter of the insolvency
6 proceedings for The Commonwealth of Puerto Rico
7 to take the deposition of Ojas Shah.

8 The court reporter may proceed.

9 OJAS SHAH,
10 having been first duly sworn to tell the truth, the
11 whole truth and nothing but the truth relating to
12 said matter, was examined and testified as follows:

13 MR. GILLESPIE: Good morning everybody. My
14 name is Noah Gillespie, and I'm an attorney with
15 Schulte Roth & Zabel. And together with the law
16 firm McConnell Valdes, we represent certain
17 creditors known in this proceeding as the DRA
18 parties.

19 I'm joined today by Doug Koff and
20 Jacqueline Maero Blaskowski of my firm and also
21 certain colleagues from McConnell Valdes.

22 Before we went on the record, we had a
23 discussion just to note that the witness has a
24 keyboard and computer screen, computer monitor
25 in front of him.

1 modeling you could do, you know, to prepare a
2 perspective and, you know, help try and, you
3 know, further thinking on how to size what that
4 hole may be, absent whatever the government may
5 have been doing at that time.

6 Q How does the work that you personally were doing
7 between 2017 and 2019 relate, if at all, to the
8 best interest test report?

9 MR. MERVIS: Objection to form.

10 MR. JOSEPH: Objection to form.

11 Go ahead.

12 A I'm not sure there is much of a correlation
13 other than it involved a level of modeling. It
14 has a financial aspect to it.

15 Obviously, there is a cash component which,
16 you know, is helpful, but it's not -- none of
17 that work directly informs the best interest
18 analysis.

19 BY MR. GILLESPIE:

20 Q Is the same true for the work that your team was
21 doing from 2017 to 2019?

22 A Yeah. I don't think it would be different.

23 Q So then you --

24 We kind of left off at 2019.

25 A Yes.

1 Q Were there other projects that you were involved
2 with from 2019 onward other than the best
3 interest test report?

4 A That was certainly my primary responsibility. I
5 don't recall any other discrete projects other
6 than, as I've referenced earlier, as a member of
7 our team, there's certainly a level of QC or
8 others on other work product produced by the
9 team that I would have done, but those were not
10 individual projects.

11 Q When did you start work on what's now the best
12 interest test report?

13 MR. MERVIS: Object to the form.

14 A There would have been some --

15 MR. GILLESPIE: What's the nature of the
16 objection?

17 MR. MERVIS: What's that?

18 MR. GILLESPIE: I'm sorry, Mr. Mervis.
19 What's the nature of the objection?

20 MR. MERVIS: The nature of the objection is
21 I don't think your question is sufficiently
22 precise when you say "best interest test report"
23 because there have been multiple iterations over
24 time.

25

1 Sorry about that. I don't have it on my
2 screen, and I think others may not.

3 MR. GILLESPIE: Why don't we have that put
4 up on the Screen Share so that everyone can see
5 it easily as well.

6 MR. JOSEPH: Okay. This is Andrew
7 speaking. Both myself and the witness have the
8 document in front of us on the screen.

9 MR. GILLESPIE: Mr. Thomas, are you able to
10 screen-share for the benefit of the others?

11 THE TECHNICIAN: Sure. I didn't know if
12 you wanted me to do it or not. I'll bring it
13 up.

14 Sorry. My computer kind of stuttered for a
15 second. It's on the screen now.

16 MR. GILLESPIE: Very good. I can see that.

17 BY MR. GILLESPIE:

18 Q Mr. Shah, are you able to see the Screen Share
19 as well?

20 A Yes.

21 Q Mr. Shah, is this your report?

22 MR. JOSEPH: Can he scroll through it.
23 What we're looking at is the first page. He's
24 got the ability on the screen; so you don't need
25 to do it up there.

1 A I've scrolled through, really fast, the first
2 30, 40 pages, but, yes, this looks like my
3 report.

4 (Deposition Exhibit 1 was presented for
5 identification.)

6 MR. GILLESPIE: And I'll note for the
7 record that what we marked for identification
8 as Shah Exhibit 1 bears some docket stamps from
9 the docket in the main proceeding which are
10 17628-16.

11 BY MR. GILLESPIE:

12 Q Mr. Shah, do you stand behind this report?

13 A I do.

14 Q What was McKinsey's assignment in connection
15 with this report?

16 A We were asked to prepare an analysis on the
17 recoveries that creditors could receive should
18 the Title III cases be dismissed.

19 Q What conclusions did you reach?

20 MR. MERVIS: Objection to form.

21 MR. JOSEPH: Objection to form.

22 A My conclusions.

23 The analysis has a series of outputs that
24 estimate a range of recoveries. That would be
25 our, I use your term, "conclusions." Although

1 BY MR. GILLESPIE:

2 Q I'll ask more generally.

3 Is there anywhere we would see, in your
4 uses of cash analysis, any of the creditor fees
5 from the settlements in this case?

6 MR. JOSEPH: Objection to form.

7 MR. MERVIS: Same objection.

8 A The settlements under the plan wouldn't be part
9 of the analysis excluding the plan; so no.

10 BY MR. GILLESPIE:

11 Q Understood.

12 We can return to Exhibit Number 1. Let's
13 look at page 6, please.

14 So we're going to talk now about liquidity.

15 A Okay.

16 Q I would direct your attention, first of all, to
17 Footnote 10 that's at the bottom of this page 6.

18 A Sorry. I was still on the wrong doc. Let me go
19 back.

20 Yeah, sure. Footnote 10. Okay.

21 Q And you see they talk about there's -- about
22 cash restrictions, and then there are other
23 categories labeled there such as "Not Reviewed,"
24 "Potentially Unavailable Cash."

25 Did you examine any of these other

1 categories mentioned in Footnote 10?

2 A Help me understand what you mean by "examine."

3 Q So the analysis elsewhere on page 6 and also in
4 the table called Exhibit 1 on page 6, do you see
5 how it's talking about the amount of
6 unrestricted cash?

7 A That's right.

8 Q So when you're trying to calculate unrestricted
9 cash, did you review any of these categories
10 that were labeled: Not Reviewed; Potentially
11 Unavailable Cash; Potentially Inaccessible Cash?

12 A I'm struggling on what you mean by "review."

13 We did what we say we did. And as
14 identified above in the reference, this
15 information was taken from the cash analysis
16 prepared by the FOMB, and, as we say in
17 Footnote 10, use -- those identified as legally
18 restricted were determined to be restricted.

19 Q The end of the footnote goes on to say that
20 these other categories are considered
21 unrestricted?

22 A That's right. That's the approach we took.

23 Q Did you do any work to independently determine
24 what was restricted or unrestricted cash?

25 A And I think this was asked earlier, but, no, we

1 did not.

2 Q So then we went --

3 We discussed this -- some of the paragraphs
4 and tables on this page before, and we talked
5 about how there was roughly \$11 billion as of
6 June 30, 2021?

7 A That was the estimate, yes.

8 Q And that that estimate was a projection based on
9 a figure from June 30, 2020?

10 A That's correct.

11 MR. GILLESPIE: Let's return to Exhibit 5,
12 the very long one, and let's please go to
13 page 178.

14 Mr. Thomas, I'm still seeing page 421. Can
15 we move the Screen Share to page 178.

16 MR. JOSEPH: Wrong doc. It's the -- he's
17 going back to the disclosure statement,
18 Exhibit 5, page 178.

19 MR. GILLESPIE: Yes.

20 A Okay. 178. Mm-hmm.

21 BY MR. GILLESPIE:

22 Q So there's a table in the middle of the page,
23 and there's a line that says:

24 "CW Subtotal."

25 Do you see that?

1 A CW Subtotal, yes.

2 Q And under Unrestricted, it reflects 11 billion,
3 609 million, and some dollars?

4 A Okay.

5 Q Do you see that this is the balance -- this is
6 based on the balance as of March 31 of 2021?

7 A That's correct.

8 Q If we go back to Exhibit 1, what would the table
9 of Exhibit 1 look like if we started from the
10 March 2021 balance?

11 MR. MERVIS: I object to the form.

12 A I don't know. I can't calculate that just
13 sitting here today.

14 MR. MERVIS: I don't know what happened.

15 THE WITNESS: Yes. Sorry.

16 MR. MERVIS: The screen went blank.

17 MR. JOSEPH: You disappeared for a second.
18 Did you get his answer?

19 MR. GILLESPIE: I got the answer.

20 MR. KOFF: The screen's still blank here.

21 MR. JOSEPH: You know, just five seconds,
22 it went dark, and you guys are back.

23 So go ahead, Noah.

24 MR. GILLESPIE: We're back.

25

1 BY MR. GILLESPIE:

2 Q Here in Exhibit 1, let's go ahead to page 26.

3 MR. GILLESPIE: Mr. Thomas, I don't know if
4 we can navigate to page 26.

5 THE TECHNICIAN: I thought you said
6 Exhibit 6. I'm sorry.

7 MR. GILLESPIE: No.

8 THE TECHNICIAN: There you go. 26.

9 MR. GILLESPIE: Thank you.

10 BY MR. GILLESPIE:

11 Q So, Mr. Shah, let's look here on page 26 at what
12 you've called Exhibit 16.

13 A Okay.

14 Q Can I direct your attention to the Starting Cash
15 figures in the --

16 A Okay.

17 Q How did you calculate the Starting Cash amounts
18 here?

19 A These amounts come from that table we were just
20 looking at.

21 Q Maybe we should go back to that table and you
22 can just walk us through.

23 THE TECHNICIAN: And what page is the last
24 table on?

25 MR. GILLESPIE: It's on page 6.

1 THE TECHNICIAN: Thank you.

2 A Okay.

3 So your question is to walk through this
4 calculation?

5 BY MR. GILLESPIE:

6 Q Let's take it piece by piece.

7 I see here, in what you've labeled
8 Exhibit 1 on page 6 of Shah Exhibit 1, we can
9 start with just the Unrestricted, CW Cash
10 Balance.

11 And as of June 30, 2021 --

12 A Uh-huh.

13 Q -- that is listed as 11 thousand 4, which means
14 11 billion, 4 million dollars?

15 A That's correct.

16 Q And so then why don't you walk us down the table
17 from there, just the different steps that gets
18 us to the cash available.

19 A So the 11 billion 4 is adjusted for the minimum
20 cash requirements required for the Commonwealth,
21 which are estimated between one two and 1.7; and
22 the nine three 0 four to nine eight 0 four is
23 simply the eleven zero zero four subtracting the
24 one seven zero zero and the one two zero zero.

25 Q Understood.

1 So if we go back to page 26.

2 A Mm-hmm. Yes.

3 Q You see the starting cash there is either of
4 those two values. There's the left column, the
5 starting cash is equal to 9.3 billion, and the
6 column to the right of that, we're starting cash
7 at 9.8 billion; is that right?

8 A Correct.

9 Q If we go down to page 28.

10 A Page 28. Okay.

11 Q This is called Appendix 4.

12 So, you know, could you tell us how you
13 arrived at the 1.2 to 1.7 range for the minimum
14 cash requirements?

15 MR. MERVIS: Objection to the form.

16 A The 1.2 to 1.7 is per the analysis that's
17 depicted here, looking at benchmarks, and this
18 analysis is -- it was also included in the
19 FOMB's cash report that we discussed previously
20 and where the cash analysis is contained.

21 BY MR. GILLESPIE:

22 Q So let's look at I think it's the fourth item,
23 Community Disaster Loans.

24 Do you see that?

25 A I do, yes.

1 Q The description there is that U.S. Treasury gave
2 Puerto Rico access to CDLs as needed. And so
3 this is a measure --

4 Is it fair to say this is a measure based
5 on Puerto Rico?

6 MR. JOSEPH: Objection to form.

7 MR. MERVIS: I object to the form.

8 A I can't comment on what U.S. Treasury based its
9 analysis on.

10 BY MR. GILLESPIE:

11 Q The description says here:

12 "The U.S. Treasury gave Puerto Rico access
13 to CDLs."

14 And that's what that row of this Exhibit 19
15 is representing; is that right?

16 A That's correct. What that row represents is, as
17 it says there, where the U.S. Treasury, with
18 respect to accessing CDLs, had kind of set its
19 target.

20 Q In here, the range, based on CDLs, is from
21 800 million to \$1.1 billion?

22 MR. MERVIS: Object to the form.

23 A That's what the chart says, yes.

24 BY MR. GILLESPIE:

25 Q And if we're --

1 A Actually, no, that's not.

2 Q Okay.

3 A So what the chart says is that the Treasury set
4 the reserve target at 1.1 billion. It was
5 increased from 800 -- at some point, there was
6 probably an initial target at 800, which was
7 then raised to 1.1. That's what that says.

8 Q And the row above it is labeled "Municipality
9 Comparable"?

10 A That's correct.

11 Q And the description references the City of
12 Detroit?

13 A That's correct.

14 Q And based on this metric, the description says:
15 "Correspondingly, Puerto Rico would retain
16 \$1 billion."

17 Is that right?

18 A That's what that line says; correct.

19 MR. GILLESPIE: Jacque, if I could please
20 have you mark Tab 6, please.

21 THE TECHNICIAN: It's there already.

22 MR. GILLESPIE: Pull that up, please. I'll
23 direct your attention to page 18.

24 MR. JOSEPH: Identify for the record what
25 this is.

1 MR. GILLESPIE: This is a presentation
2 available on the FOMB's website, which is dated
3 September 17 of this year.

4 (Deposition Exhibit 6 was presented for
5 identification.)

6 MR. JOSEPH: Thank you.

7 BY MR. GILLESPIE:

8 Q We're looking at page 18, and I would direct
9 your attention to the box that's on the bottom
10 right.

11 Let me know when you're there.

12 A I am here.

13 Q You'll see that there's an entry for Min Cash
14 Balance?

15 A Min? Maybe you can draw -- I'm just not seeing
16 it.

17 MR. JOSEPH: Is it 18 of the slide or is it
18 18 of the --

19 A You said there's a box? No.

20 BY MR. GILLESPIE:

21 Q I'm looking at Shah Exhibit 6, and it's page 18.
22 When you look at it, there's an 18 on the bottom
23 right of the page.

24 MR. JOSEPH: Yeah. Got it.

25

1 BY MR. GILLESPIE:

2 Q I'm looking at the box on the bottom right that
3 starts with 4,900 million for CW Public Corps.?

4 A Yes.

5 Q And a few lines down from that, there's an entry
6 for Min Cash Balance?

7 A Yes.

8 Q The value there is \$1 billion?

9 A That's -- that's there. Yes.

10 Q We can return back it Exhibit 1. My question
11 is --

12 Let's see. We looked at the starting cash
13 amounts that resulted from the minimum cash
14 requirements that we were talking about.

15 Do you remember that?

16 A Yes.

17 Q Has McKinsey looked into different starting cash
18 amounts?

19 MR. MERVIS: Objection to form.

20 MR. JOSEPH: Same objection.

21 Go ahead.

22 A Again, you're asking have we done an analysis?
23 We have not done an analysis on cash.

24 BY MR. GILLESPIE:

25 Q Are you familiar with the emergency reserve

1 fund?

2 A Can you help me understand what "familiar"
3 means.

4 Q Have you heard of an emergency reserve fund for
5 Puerto Rico?

6 A Yes. It's a piece of the fiscal plan.

7 Q In your analysis, are these funds considered
8 restricted?

9 A They are not.

10 Q Look at Exhibit 1, page 4.

11 A So we're going back to Exhibit 1. All right.
12 Okay.

13 Q The third bullet point says:

14 "The transfer of 130 million per year
15 through fiscal year 2028 to the reserve for
16 emergency fund outlined in the fiscal plan is
17 assumed not to occur."

18 A That's correct.

19 Q If we look back at Exhibit 6, again on page 18,
20 I'll direct your attention to the line below the
21 Minimum Cash Balance.

22 Do you see there's an item for Disaster
23 Revolver?

24 A I see that there's an item for Disaster
25 Revolver, yes.

1 Q It says it has a value of \$750 million?

2 A That's right.

3 Q And this box that we've been talking about on
4 page 18 is connected to a label that says:

5 "CW cash retained by the government"?

6 A That's what it says, yes.

7 Q Mr. Shah, I want to take you back a little bit.
8 We're talking about one of the earlier projects
9 that you did for the Commonwealth.

10 MR. GILLESPIE: Mr. Thomas, we can take
11 down the Screen Share for this moment.

12 A Okay.

13 BY MR. GILLESPIE:

14 Q I don't know if you remember the testimony,
15 Mr. Shah, about one of the projects that you
16 worked on for the FOMB before was liquidity
17 monitoring?

18 A That's right.

19 Q And there may have been other liquidity analysis
20 that you also worked on. I apologize, I forgot
21 the name of --

22 A Sure. Yes.

23 Q So I'm wondering has any of that work been
24 refreshed more recently by you and your team?

25 A No.

1 Q So do you know where the Commonwealth is in
2 terms of its liquidity position this fiscal
3 year, one way or another?

4 A It's not something I track regularly.

5 Q We've mentioned a few times in passing something
6 that you referred to as the "resource envelope"?

7 A That's correct.

8 MR. GILLESPIE: It may help if we pull up
9 Exhibit 1 again and look at page 4.

10 BY MR. GILLESPIE:

11 Q Let me know when you're there.

12 A Okay. Page 4. Yes.

13 Q So there are bullet points for the Resource
14 Envelope, Outstanding Debt, and Priorities for
15 Distribution of Funds?

16 A That's right.

17 Q How did you know what the priorities for
18 distribution of funds should be?

19 A This was a combination of the legal assumptions
20 here as well as conversations with counsel.

21 Q Based on your analysis, what assets did you
22 consider available to creditors?

23 MR. MERVIS: I object to the form.

24 MR. JOSEPH: Yeah, I also object.

25 A The analysis assumes the resource envelope, as

1 it's defined here.

2 BY MR. GILLESPIE:

3 Q I see.

4 Does the resource envelope in your analysis
5 include COFINA-related funds?

6 MR. MERVIS: Objection to the form.

7 A Again, give me -- I need more information to
8 understand what funds you're referring to.

9 BY MR. GILLESPIE:

10 Q It might help if we look, for example --

11 Start with this.

12 Mr. Shah, are you familiar with an agency
13 in Puerto Rico called COFINA?

14 A I am familiar with the term "COFINA."

15 Q So what I'm trying to understand is whether or
16 not the resource envelope here includes any
17 assets related to COFINA.

18 MR. MERVIS: Objection to the form.

19 A When you say "assets related to COFINA," can you
20 be a little more specific so I can answer the
21 question.

22 BY MR. GILLESPIE:

23 Q I can ask it more generally.

24 When you are calculating the resource
25 envelope, did you include assets that belong or

1 might be determined by court to belong to any of
2 the instrumentalities of Puerto Rico?

3 MR. JOSEPH: Objection. Form.

4 MR. MERVIS: Yeah, I object to the form.

5 A Again, I have to know specifically what assets
6 you're referring to to be able to answer the
7 question.

8 BY MR. GILLESPIE:

9 Q What does the resource envelope include?

10 A So the resource envelope includes -- as we've
11 outlined here, it includes CRIM revenues; it
12 includes conditionally allocable revenues; it
13 includes any appropriations that can get pulled
14 back from IFCUs; and it includes the surplus
15 generated under the fiscal plan when excluding
16 these other three items because they are already
17 accounted for so we're not double counting.

18 Plus there's an assumption that with the
19 confirmation of an ERS plan, there is a certain
20 amount of ERSs that will come back to the
21 Commonwealth as available.

22 Q So are there any assets of the Commonwealth that
23 are not included in the resource envelope?

24 MR. MERVIS: Objection to the form.

25 MR. JOSEPH: Same objection.

1 A I mean, I don't -- when you say "any assets," I
2 don't know what that refers to.

3 BY MR. GILLESPIE:

4 Q First of all, is restricted cash included in the
5 resource envelope?

6 A Is restricted cash -- no.

7 As it states here, it's the cash on hand
8 available for debt service, and we've just
9 walked through how we calculate that.

10 Q How would your conclusion change if the resource
11 envelope included all of the Commonwealth's
12 assets except for earmarked federal funds?

13 MR. JOSEPH: Objection to form. Calls for
14 speculation.

15 A I don't know. I have no way to answer that
16 question just sitting here today.

17 BY MR. GILLESPIE:

18 Q You and your team conducted the analysis in
19 Exhibit 1 based on the resource envelope that
20 you've described; correct?

21 A That's correct.

22 Q Do you have an understanding of whether the
23 resource envelope would be greater than the one
24 that you assumed if it included all of the
25 Commonwealth's assets except for federal funds?

1 MR. MERVIS: Object to the form.

2 MR. JOSEPH: Same objection.

3 Go ahead.

4 A I don't know. I would have to understand what
5 those assets are and what contribution they
6 would make to the resource envelope.

7 BY MR. GILLESPIE:

8 Q Is there unrestricted cash in Puerto Rico aside
9 from earmarked federal funds?

10 MR. MERVIS: Objection to the form.

11 A I don't understand. Can you repeat that
12 question. Is there what?

13 BY MR. GILLESPIE:

14 Q My question is is there unrestricted cash beyond
15 earmarked federal funds?

16 A I don't know how to answer that question. I
17 don't know.

18 Q In your analysis, you reached an estimate of the
19 amount of unrestricted cash that the
20 Commonwealth holds?

21 A Yes. We have an estimate for that number.

22 Q Do you have an understanding of the components
23 that go into that total of unrestricted cash?

24 A We have the components outlined in the board's
25 cash analysis.

1 MR. JOSEPH: I'm good with a break now.

2 MR. KOFF: Well, let's finish up the line
3 of questioning, if you want, and then take a
4 break; right? I mean, unless you're done.

5 MR. GILLESPIE: I think this is an
6 appropriate time to break.

7 THE VIDEOGRAPHER: Going off the record at
8 2:24.

9 (A recess was taken.)

10 THE VIDEOGRAPHER: We are back on the
11 record at 2:38.

12 MR. GILLESPIE: I'll ask Jacque to
13 introduce Tab 7.

14 THE TECHNICIAN: Should be ready.

15 BY MR. GILLESPIE:

16 Q Mr. Shah, let me know when you have that
17 available to you.

18 A I have it here.

19 (Deposition Exhibit 7 was presented for
20 identification.)

21 Q I'll let you review it as much as you like. My
22 question for you is, you know, are you aware of
23 the Biden administration's potential
24 improvements to Medicaid funding for
25 Puerto Rico?

1 A This is the first I'm seeing this; so I'd have
2 to read it to try and understand it.

3 Q That was not a factor in your report?

4 MR. JOSEPH: I think he just said he has to
5 read it to understand what it is; so let's let
6 him do that.

7 MR. GILLESPIE: Sure.

8 A Okay.

9 BY MR. GILLESPIE:

10 Q Mr. Shah, now that you've had a chance to review
11 Exhibit 7, did you consider potential
12 improvements to Medicaid funding from the Biden
13 administration in your analysis?

14 A Did I consider potential improvements? No, I
15 haven't considered any potential improvements.

16 MR. GILLESPIE: We can take down the Screen
17 Share.

18 BY MR. GILLESPIE:

19 Q Mr. Shah, I think you said earlier that your
20 analysis in what we are looking at today as
21 Exhibit 1 deals with the --

22 (Reporter request for clarification.)

23 Q Mr. Shah, I think you were telling us earlier
24 today your analysis in what we've been looking
25 at as Exhibit 1 deals with the scenario where

1 the Title III case is dismissed?

2 A That's correct.

3 Q And so that's essentially a nonbankruptcy
4 scenario?

5 A That's correct.

6 Q So in the nonbankruptcy scenario, if Puerto Rico
7 has a bigger surplus in the future, what will
8 that mean for creditors' recoveries?

9 MR. JOSEPH: Objection to form.

10 A In a nonbankruptcy scenario, if the creditors
11 have -- or if the Commonwealth, you said, has
12 more surplus? Is that what you said --

13 BY MR. GILLESPIE:

14 Q Yes.

15 A -- in the future?

16 It should mean that that surplus will
17 benefit some creditor.

18 Q What is your understanding of the best interest
19 test?

20 MR. JOSEPH: Objection to form.

21 (Reporter clarification.)

22 MR. MERVIS: Yeah. I object to the form.

23 A I don't understand the question. Maybe you can
24 provide a little bit of context. Is it a
25 general question? What is concept? Context?

1 It's hard to answer.

2 BY MR. GILLESPIE:

3 Q In Exhibit 1 that we were looking at throughout
4 the course of the day, it's entitled "Best
5 Interest Test Report"; right?

6 A The report I've prepared is an analysis of
7 creditor recoveries, which is what the title
8 says. The exhibit here is titled "Best Interest
9 report." Yes.

10 Q In your view, were you looking at whether or not
11 the best interest test was satisfied?

12 MR. JOSEPH: Objection. Form.

13 Go ahead.

14 A This report is a report estimating what
15 recoveries would be available if the Title III
16 was dismissed. That's what this report does.

17 BY MR. GILLESPIE:

18 Q Did you consider whether or not the plan of
19 adjustment in this case satisfies the best
20 interest test?

21 MR. JOSEPH: Object to the form.

22 MR. MERVIS: Yeah, object to the form.

23 A Again, this report outlines the recoveries -- an
24 estimate of likely recoveries should the
25 Title III cases be dismissed.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PROMESA TITLE III
CASE NO. 17 BK 3283-LTS

In re:)
)
THE FINANCIAL OVERSIGHT)
AND MANAGEMENT BOARD FOR)
PUERTO RICO,)
)
as representative of)
)
THE COMMONWEALTH OF PUERTO RICO,)
THE EMPLOYEES RETIREMENT SYSTEM OF)
THE GOVERNMENT OF THE COMMONWEALTH)
OF PUERTO RICO, AND THE PUERTO)
RICO PUBLIC BUILDINGS AUTHORITY,)
)
Debtors.)

REMOTE VIDEO-RECORDED DEPOSITION

OF

GAURAV MALHOTRA

The remote video-recorded deposition upon
oral examination of GAURAV MALHOTRA, a witness
remotely sworn by me, Tara Gandel Hudson, RPR, CRR,
a Notary Public in and for the County of Hancock,
State of Indiana, taken on behalf of the
Cantor-Katz Collateral Monitor, LLC, as Collateral
Monitor for GDB Debt Recovery Authority, with the
witness located in Chicago, Cook County, Illinois,
on the 15th day of October, 2021, scheduled to
commence at 9:30 a.m. AST/8:30 a.m. CDT, pursuant
to the Federal Rules of Civil Procedure with
written notice as to the time and place thereof.

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David Prager, Kroll

Matthew G. Pinos, Law Clerk, SRZ

Roy Berman, Law Clerk, Morrison & Foerster

Ashley Weringa, Law Clerk, Proskauer

Paul Baker, Technician

Kurt Henschel, Videographer

Karen Patterson, Veritext

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Luis Dalmau Santiago, Hon. Rafael	
Hernandez Montanez	

1 (9:34 a.m. AST/8:34 a.m. CDT)

2 THE VIDEOGRAPHER: We are on the record at
3 8:34. Today's date is August [sic] 15, 2021.
4 This is The Matter of the Insolvency Proceedings
5 for The Commonwealth of Puerto Rico.

6 The witness today is located in Chicago,
7 Illinois. This deposition is being recorded
8 with video and stenographically by Veritext via
9 Zoom.

10 Tara, would you like appearances on the
11 record or just noted stenographically?

12 THE REPORTER: That's up to counsel.

13 MS. DALE: They don't need to be on the
14 record from my perspective.

15 MR. MOTT: I wouldn't think so. We have
16 quite a few people here. So if just the people
17 participating or who plan to participate want to
18 put appearance on the record, that would work
19 for me.

20 My name is Tom Mott. I'm an attorney with
21 Schulte Roth & Zabel together with the law firm
22 of McConnell Valdes. We represent certain
23 creditors in this litigation known as the DRA
24 parties. I'm joined today by my colleagues Doug
25 Koff and Erika Simonson. I'm not sure who from

1 McConnell is here, but I know there's some
2 people on from McConnell as well.

3 I guess, Margaret, why don't you take it
4 away.

5 MS. DALE: Hi. I'm Margaret Dale from
6 Proskauer Rose on behalf of the oversight board
7 and the witness.

8 MS. DeCAMP: Antoinette DeCamp in the
9 general counsel's office of Ernst & Young on
10 behalf of Ernst & Young and the witness.

11 MR. MOTT: And Antoinette, were you
12 planning on being on camera or --

13 MS. DeCAMP: I had gone -- I can go on
14 camera. I had gone off camera so that the
15 witness can see both you and himself because of
16 that. So I can go on camera if you prefer, or I
17 can stay off and make sure the witness can see
18 you when you're questioning him.

19 MR. MOTT: So was the technical difficulty
20 figured out such that this works, with all four
21 of us on camera, or does Antoinette need to stay
22 off camera in order for Mr. Malhotra to be able
23 to see.

24 THE WITNESS: I can see you now.

25 MR. MOTT: If that's all right with you,

1 Ms. DeCamp, I would prefer you're on camera.

2 MS. DeCAMP: Sure.

3 MR. MOTT: Before we begin today, I would
4 like the record to reflect as we're all aware
5 that this deposition is proceeding remotely with
6 all of us appearing via videoconferencing and
7 the witness in a separate location and all of us
8 in separate locations due to the COVID-19
9 pandemic.

10 I hope everyone is keeping safe, and I
11 trust we can all be cognizant of these technical
12 difficulties and try to remain professional and
13 avoid speaking over each other so that we can
14 get through this deposition as efficiently as we
15 can.

16 MS. DALE: I'm sorry, Tom, just to
17 interrupt for a sec.

18 I am in the conference room with the
19 witness. Just want to make that clear on the
20 record.

21 MR. MOTT: Sorry about that.

22 MS. DALE: Of course.

23 MR. MOTT: Thank you.

24 For exhibits, we will be using the Egnyte
25 system through Veritext. And my colleague Erika

1 Simonson will be marking and publishing the
2 exhibits throughout the deposition so that
3 everyone participating can see the exhibits, and
4 the witness and whomever is accessing Egnyte is
5 able to scroll through and review the exhibits
6 in real time.

7 And so just before we begin, I'd like to
8 confirm that objections today will be only as to
9 form and privilege, and all other objections are
10 reserved; and that the objection of one party
11 will suffice to reserve the rights of all other
12 parties.

13 Is that okay with you guys?

14 MS. DALE: That's acceptable.

15 MS. DeCAMP: Agreed.

16 MR. MOTT: Okay, good.

17 Oh, yes. Of course.

18 Thank you. The court reporter will swear
19 the witness and you may then proceed.

20 GAURAV MALHOTRA,
21 having been first duly sworn to tell the truth, the
22 whole truth and nothing but the truth relating to
23 said matter, was examined and testified as follows:
24
25

1 DIRECT EXAMINATION,

2 QUESTIONS BY THOMAS L. MOTT:

3 Q Mr. Malhotra, I'll be the person asking you
4 questions today. And I'd appreciate it if you
5 would let me finish my question before
6 answering, and I'll let you finish your answers
7 before I ask you any follow-ups.

8 Do you understand?

9 A I do.

10 Q And just to ensure a clear transcript, we would
11 like you to answer all of my questions verbally.

12 Because this is a remote deposition, if you
13 have any technical difficulties, please let us
14 know. For instance, if you can't hear a
15 question, just pipe in, pipe up, and we'll get
16 that sorted out.

17 If any of my questions are unclear, or if
18 you don't understand any of my questions, please
19 let me know. I'll do my best to clarify. And,
20 you know, if you don't understand the question,
21 then I'll rephrase it.

22 From time to time your counsel might object
23 to my questions, but even if they do object,
24 you're still required to answer my question
25 unless they instruct you not to and you intend

1 understanding. I am not sure, actually. I
2 believe so.

3 Q Do you know how much the FOMB is paying per hour
4 for you to be testifying here?

5 MS. DALE: Objection. He doesn't know
6 whether he's being paid to testify here.

7 MR. MOTT: I believe he said "I believe so"
8 so --

9 A I believe my billable rate on this -- in this
10 matter is discounted to either \$900 an hour or
11 somewhere in that neighborhood.

12 BY MR. MOTT:

13 Q And when you say "discounted," what do you mean
14 by that?

15 A It's discounted.

16 Q Discounted from what?

17 A From what -- another engagement, what my
18 chargeable rate would be.

19 Q What would your chargeable rate be typically?

20 MS. DeCAMP: Objection.

21 MS. DALE: Objection to the form.

22 A I think 925 or 950. I don't recall.

23 BY MR. MOTT:

24 Q Do you know why your chargeable rate has been
25 discounted in connection with this matter?

1 MS. DeCAMP: Objection.

2 A Over the first -- course of the first two or
3 three years, I recall, I think we have not
4 charged any rate increases on the engagement in
5 terms of billable hourly rates.

6 BY MR. MOTT:

7 Q So initially, your hourly rate wasn't discounted
8 but because of -- because of raises in
9 connection with your chargeable rate on other
10 matters, it's now discounted here?

11 MS. DeCAMP: Objection to form.

12 A Can you rephrase that question, please.

13 BY MR. MOTT:

14 Q It's not worth it, honestly.

15 Do you know if you were paid any different
16 rate in connection with your preparations for
17 testifying here as opposed to the actual day of
18 testimony?

19 MS. DeCAMP: Objection.

20 A Yes.

21 BY MR. MOTT:

22 Q Are you being paid in connection with the
23 declaration that you drafted?

24 MS. DeCAMP: Objection.

25 A Yes.

1 BY MR. MOTT:

2 Q And that declaration includes expert testimony?

3 MS. DeCAMP: Objection.

4 MS. DALE: Objection. Calls for a legal
5 conclusion.

6 A My testimony is of a nonretained expert and --

7 BY MR. MOTT:

8 Q And you're getting compensated for providing
9 your nonretained expert opinion; is that
10 correct?

11 MS. DeCAMP: Objection. Objection.

12 You can answer.

13 A Yes.

14 BY MR. MOTT:

15 Q Do you have an engagement letter specific to
16 your providing testimony in connection with the
17 restructuring of Puerto Rico?

18 A My belief is that it should be covered under one
19 of our existing statements of work.

20 Q So there's a statement of work that sets out,
21 within the scope of its services, your providing
22 expert testimony?

23 MS. DeCAMP: Objection. Foundation and
24 form.

25 A There is an engagement letter in the context of

1 ERS where I provided expert testimony, as I
2 mentioned earlier.

3 BY MR. MOTT:

4 Q Right.

5 And so with respect to the plan
6 confirmation proceedings, is there a separate
7 engagement letter with respect to that
8 testimony, or is your engagement still through
9 the ERS engagement letter?

10 MS. DeCAMP: Objection.

11 A No, on the ERS engagement letter. As a part of
12 our ongoing work as part of the existing
13 statements of work, I would provide a testimony,
14 but not as a part of the ERS-specific engagement
15 letter.

16 BY MR. MOTT:

17 Q Right.

18 So there is a statement of work in the
19 Ernst & Young agreement with the oversight board
20 that sets out your providing testimony; is that
21 correct?

22 A I would have to go back and confirm. But as you
23 saw earlier, you know, the work that we have
24 done in the context of plan feasibility, I do
25 not recall whether specifically the words of

1 testimony are or are not listed in the statement
2 of work. I do not recall.

3 But the work around plan feasibility is
4 sort of what my testimony is about.

5 Q Right. But you're not --

6 You're getting paid to provide that
7 testimony; is that right?

8 MS. DeCAMP: Objection. Form.

9 A That is my assumption.

10 BY MR. MOTT:

11 Q And do you know if Adam Chepenik is also being
12 compensated for his testimony?

13 MS. DeCAMP: Objection. Foundation, form.

14 A Yes. We're all a part of the same engagement
15 letter that we are working off of, which calls
16 out how we are getting compensated, how EY is
17 getting compensated.

18 BY MR. MOTT:

19 Q Several weeks ago when you were contacted by
20 Proskauer and told that you would potentially be
21 providing testimony in connection with the plan
22 confirmation proceedings, was there any
23 discussion of amending the scope of any
24 statements of work in order to encapsulate that
25 testimony?

1 likely be followed by reorganization; is that
2 right?

3 MS. DeCAMP: Objection to the form.
4 Hypothetical.

5 BY MR. MOTT:

6 Q You can answer.

7 A That was a hypothetical. I really can't go into
8 percentages of likelihood one way or the other
9 based on the assumptions that are in the fiscal
10 plan in conjunction with the obligations that
11 have been entered into as a part of the
12 settlements.

13 My testimony is that it is not likely that
14 the Commonwealth will have to go through another
15 financial reorganization.

16 Q Why --

17 Sorry. I didn't mean to talk over you.

18 A That's all I had to say. Sorry.

19 Q Why, in your opinion, is confirmation of the
20 plan not likely to be followed by the need for
21 further financial reorganization?

22 A So when I look at the revenues in the fiscal
23 plan and of what is included and what is not
24 included, and I look at the expenses in the
25 fiscal plan, and I look at the overall creditor

1 settlements, those all combined together do not
2 raise the fact that the Commonwealth -- do not
3 raise a concern that the Commonwealth will have
4 to default on its obligation that it is entering
5 into based on those assumptions.

6 So I don't know if that answers your
7 question.

8 Q It sounds like it is because there's a whole lot
9 of money, and it's going to be sufficient to
10 cover all the obligations; is that right?

11 A I wouldn't say there's a whole lot of money.

12 I look at these things as a balance on what
13 are the assumptions that are going into revenues
14 and expenses, both up and down.

15 Q Yeah.

16 A So it's a balance.

17 Q Right. But it's --

18 Well, is it a close call, in your mind,
19 whether or not the plan is going to likely need
20 to be followed by reorganization, or is it a
21 pretty clear-cut determination for you?

22 A I think based on the current assumptions, I find
23 it that the Commonwealth is unlikely to have to
24 default based on the current assumptions.

25 But if those assumptions change, you know,

1 the results change, and the testimony of the
2 opinion changes.

3 Q But your current opinion, based on the current
4 assumptions, is that it's not likely to be
5 followed by a need for reorganization?

6 A That is correct.

7 Q And based on the current assumptions, you think
8 it's a relatively small chance that there is
9 further reorganization needed, or is it a close
10 call?

11 A It's not likely that there is a need for a
12 financial reorganization. That's what I'm
13 comfortable saying.

14 Q So you're not comfortable getting any more
15 specific than saying it's not likely? Are you
16 comfortable saying it's highly unlikely to be
17 followed by the need under the current
18 assumptions?

19 A I'm comfortable saying what the -- what my
20 current --

21 The way it's framed currently in terms of
22 not likely.

23 Q When you say based on your current assumptions,
24 are those your assumptions, or have those
25 assumptions been provided to you by counsel?

1 A Those are the -- I refer to the assumptions on
2 the fiscal plan combined with, you know, what is
3 in the disclosure statement.

4 That's what I sort of refer to, you know,
5 in terms of what is in the plan or not in the
6 plan combined with the overall settlements that
7 are proposed in the plan.

8 Q Do you have any reason to believe that any of
9 those current assumptions are not correct?

10 A No. I wouldn't -- no.

11 MR. MOTT: It's 12:30 or just about. Do
12 you think we could take half an hour for lunch,
13 or do you need more than half an hour?

14 MS. DALE: I'll just let you know we're in
15 Chicago where it's 11:30.

16 MR. MOTT: Oh, my gosh. Do you want to go.

17 MR. KOFF: Can we go off the record.

18 THE VIDEOGRAPHER: Off the record at 11:29.

19 (A recess was taken between 12:29 p.m. AST
20 and 1:19 p.m. AST.)

21 THE VIDEOGRAPHER: We are on the record at
22 12:19.

23 BY MR. MOTT:

24 Q So going back to the document we were just
25 looking at.

1 So with respect to the first opinion:

2 "That confirmation of the plan is not
3 likely to be followed by the need for further
4 financial reorganization."

5 The next paragraph sets forth several bases
6 for that opinion.

7 The first that I wanted to talk about was
8 actually the fourth basis listed.

9 Your:

10 "Experience in providing financial
11 restructuring advisory services in public sector
12 restructuring."

13 I know we talked a little bit about
14 Detroit. I'm just wondering if, in your own
15 words, you can tell me a little bit more about
16 how your experience has informed this opinion.

17 A Sure. Sure.

18 It's in the context of looking at long-term
19 projections over a long-term time frame and
20 ascertaining that, you know, the public sector
21 entity can meet its obligations.

22 And at the same time, just provide, in
23 those projections at least, the cost of the key
24 components of the cost of actually operating the
25 government, you know, any other reliance on new

1 money or new resources coming into the public
2 sector entity.

3 So that's sort on the context of how I look
4 at it, based on the work that I've done
5 elsewhere as well.

6 Q Have you been a part of any restructurings where
7 the restructured public entity, you know, after
8 the adjustment was actually -- it needed to be
9 reorganized again shortly after?

10 A No.

11 Q Are you aware of any restructurings where there
12 was a need shortly following readjustment for
13 further reorganization?

14 A Not from the top of my head, no.

15 Q And do you think that's because each of these --
16 or, strike that. Sorry.

17 So are you basing --

18 This aspect of your basis for the opinion,
19 is it based specifically on your work in
20 connection with other restructurings, or does it
21 also include with respect to your work on
22 Puerto Rico?

23 A It is a combination of the work that I've done
24 in other restructurings and the current set of
25 assumptions in Puerto Rico's restructure.

1 Q So going up to the first basis listed, you're
2 feeling:

3 "That confirmation of the plan is not
4 likely to be followed by the need for further
5 financial reorganization."

6 Item 1 in that paragraph reads or refers
7 to:

8 "Forecasts of revenues, expenditures,
9 budgets, and the amounts necessary for the
10 Commonwealth to make payments that will be due
11 pursuant to the plan."

12 I'm wondering what forecasts are you
13 referring to here?

14 A The forecasts that are in the fiscal plan.

15 Q And were you provided with these forecasts, you
16 know, in the same way that everyone else was
17 provided with the fiscal plan, or were you made
18 aware of these forecasts previous to that?

19 MS. DeCAMP: Objection.

20 MS. DALE: Objection to the form of the
21 question.

22 We're not going to get into how the fiscal
23 plan was constructed; so if that's where you're
24 going, I'm going to direct him not to answer
25 that question. But if you just want to know

1 when he became aware of the fiscal plan, that's
2 fine.

3 MR. MOTT: I was more curious as to when he
4 became -- when he first reviewed the forecasts
5 that form the basis of this first opinion, was
6 it in connection with a published version of the
7 fiscal plan, or was it before then?

8 A The April 2021 fiscal plan is published, and
9 that's what I'm using, too, as the basis for my
10 testimony.

11 BY MR. MOTT:

12 Q Great. Thanks.

13 Do you know how these forecasts were
14 developed, generally?

15 A You know, I have a general understanding, but
16 the fiscal plan -- model in the fiscal plan has
17 predominantly been developed by McKinsey.

18 Q And the fiscal plan sets forth several
19 assumptions that were relied on in making these
20 forecasts; is that right?

21 A The fiscal plan is based on assumptions, yes.

22 Q And do you have any knowledge about how those
23 assumptions came to be?

24 MS. DALE: Again, we're not going to be
25 litigating the fiscal plan. The plan is what it

1 MS. DALE: Objection. Calls for a
2 hypothetical.

3 A If the ratio --

4 If the revenues are lower, all the debt
5 service is higher, and from a ratio perspective
6 in the metric, just for the debt to own-source
7 revenues, you know, the calculation is
8 different, that is one of the aspects. That's
9 the aspect that I am looking at.

10 The debt sustainability analysis looks at
11 various other components of inputs into the debt
12 sustainability analysis; so the one I looked at
13 was the debt to own-source revenues.

14 BY MR. MOTT:

15 Q And that was going to be my next question.

16 The debt sustainability analysis in the
17 certified fiscal plan involves several different
18 discrete analyses, one of them being this
19 analysis regarding debt service to own-source
20 revenue; is that right?

21 A Yes.

22 Q Am I right, Mr. Malhotra, that your opinion with
23 respect to -- your focus is on the debt service
24 to own-source revenue with respect to your
25 testimony here and not the other pieces of the

1 debt sustainability analysis in the fiscal plan?

2 A That is correct.

3 Q Is that because the debt service to own-source
4 revenue was Ernst & Young's only focus or your
5 only focus with respect to this particular
6 opinion?

7 A The debt to own-source revenue was one of the
8 main criteria that the board was focused on.

9 Q But besides the debt service to own-source
10 revenue analysis, what other aspects are there
11 of the debt sustainability analysis in the
12 fiscal plan?

13 A I don't have the fiscal plan in front of me, but
14 there were, I think, three or four other metrics
15 that are listed in the fiscal plan that we can
16 go through.

17 Q Okay. I just was curious.

18 So the first basis for the opinion that:

19 "The financial obligations provided for in
20 the plan are consistent with the debt
21 sustainability analysis in the fiscal plan" --

22 -- is that there was structured debt
23 service and other financial obligations provided
24 for in the plan.

25 I'm wondering what the "other financial

1 obligations provided for in the plan" refer to?

2 A Yeah. I mean -- I'm trying to think. It's
3 really the debt service on the current interest
4 bonds, and the COFINA debt service collectively
5 is the way I think about the total debt service.

6 Q So that's the restructured debt service. But
7 are there any other financial obligations that
8 are encapsulated by the other financial
9 obligations provided for in the plan?

10 A Not that I can think of off the top of my head,
11 no.

12 Q So on the second basis listed for the second
13 opinion, it's the debt sustainability analysis
14 that I think we've already talked about. Let me
15 just make sure I've covered everything.

16 MS. DALE: Tom, I just lost connectivity to
17 the exhibit; so hold on a second.

18 MR. MOTT: Oh, yeah.

19 MS. DALE: I apologize.

20 MR. MOTT: No worries.

21 MS. DALE: Okay. I got it back. Sorry.

22 MR. MOTT: Great.

23 BY MR. MOTT:

24 Q So the debt sustainability analysis in the
25 fiscal plan, do you know who was responsible for

1 that piece of the fiscal plan?

2 A I think it was Citi.

3 Q And was Ernst & Young or you involved in any way
4 with that work?

5 MS. DALE: Objection to the form.

6 A Not that I recall specifically.

7 BY MR. MOTT:

8 Q And the debt sustainability analysis listed in
9 the 2021 fiscal plan, when did you first become
10 aware of that analysis?

11 A I'm trying to recall whether a version of that
12 was also in the 2020 fiscal plan, but I don't
13 recall off the top of my head right now.

14 It may actually have been in an earlier
15 fiscal plan as well.

16 I don't know. It was during the construct
17 of the fiscal plan, and then the fiscal plan was
18 finally published.

19 Q In the exhibit, it says that:

20 "The restructured debt service and other
21 financial obligations provided for in the plan;
22 and the debt sustainability analysis in the
23 fiscal plan" --

24 -- are two bases for that second opinion,
25 but it says that those are -- among other

1 things.

2 It says, "Among other things," these are
3 your two bases.

4 I'm wondering if that's just a catchall, or
5 if there's anything in addition to those two
6 bases that provide a basis for the opinion that
7 the financial obligations provided for in the
8 plan are consistent with the debt sustainability
9 analysis in the 2021 certified fiscal plan for
10 the Commonwealth.

11 MS. DALE: Objection to the form. I don't
12 see those words.

13 A I'm just going to pull up because I can't -- I
14 lost this; my screen gets locked. Give me a
15 moment.

16 MS. DALE: Page 7.

17 MR. MOTT: You are right. That is only in
18 respect to Topic i and Topic iii.

19 Sorry about that.

20 While we're at it, though, and going
21 back -- and apology to be switching courses
22 here.

23 BY MR. MOTT:

24 Q With respect to your opinion that:

25 "Confirmation of the plan is not likely to

1 be followed by the need for further financial
2 reorganization" --

3 -- do you have any other bases for that
4 opinion other than those listed as (a), (b),
5 (c), or (d) in the first full paragraph of
6 page 7 of the document?

7 A No.

8 Q Okay. So that "among other things" language, if
9 we were to strike it out, we wouldn't be missing
10 out on any meaning?

11 A My testimony is not done yet so --

12 Q Do you expect to --

13 Sorry. Go ahead.

14 A As of now, you know, these four components cover
15 the basis of my testimony, but that could
16 change.

17 Q Okay. Thank you.

18 Moving onto the third opinion listed in the
19 preceding paragraph that:

20 "The financial impact of preempted
21 Commonwealth statutes, or portions thereof, is
22 inconsistent with the financial requirement of
23 PROMESA."

24 What preempted Commonwealth statutes are
25 you referring to here?

1 A So there is an exhibit in the plan of adjustment
2 that lists the preempted statutes.

3 Q And were you involved in putting together that
4 list?

5 A That list is in the plan of adjustment. I don't
6 recall putting that list together.

7 Q Did you have any input in making that list?

8 A For the plan of adjustment, I don't recall.

9 Q Do you have any experience in interpreting
10 Commonwealth statutes?

11 MS. DALE: Objection to the form.

12 A I'm not an attorney; so I'm more focused on the
13 math in terms of the impact versus anything
14 else.

15 BY MR. MOTT:

16 Q So you have no view one way or the other of
17 whether or not these statutes were, in fact,
18 preempted? It's more just listed in the plan as
19 preempted, and you go from there?

20 A My understanding is PROMESA has preempted these
21 statutes, and they are listed in the plan as
22 being preempted; so that's my understanding.
23 And, you know, in the context of the revenues
24 that are in the fiscal plan --

25 Q Mm-hmm.

1 A -- on the assumption that these are all
2 preempted.

3 Q Right. But you're not making any determinations
4 one way or the other as to whether or not the
5 statutes were, in fact, preempted.

6 You're basing the fact that they are
7 preempted on the fact that they are listed in
8 the fiscal plan as having been preempted?

9 A Yes. I'm relying on the fiscal plan and the
10 plan of adjustment that all these are preempted.

11 Q Right.

12 Why, in your opinion, is the financial
13 impact of these preempted Commonwealth statutes
14 inconsistent with the financial requirements of
15 PROMESA?

16 A Well, you know, if I think about it, there's
17 three buckets of these different statutes, and
18 each of them in general would otherwise require
19 appropriations that are not available either in
20 the fiscal plan or the budget to be made.

21 So that's the reason they are inconsistent.

22 Q Would you set forth the three buckets that you
23 were referring to?

24 A Yes. They are included in that exhibit in the
25 plan of adjustment.

1 Q They are described in like three different
2 categories; am I right?

3 A Yes.

4 Q Okay. When you say that they each require
5 appropriations that are not available in the
6 plan, isn't it the case that the plan can be
7 changed in order to allow for such
8 appropriations?

9 MS. DALE: Objection. Calls for a
10 hypothetical.

11 BY MR. MOTT:

12 Q The plan hasn't been confirmed; the plan is not
13 some in-cement thing.

14 When you say that the appropriations are
15 not available in the plan, isn't it the case the
16 plan could be changed in order to make such
17 appropriations available?

18 MS. DALE: Objection.

19 A That is a hypothetical. I know they are not in
20 the fiscal year '22 budget.

21 BY MR. MOTT:

22 Q But it's possible?

23 MS. DALE: Objection. Calls for
24 speculation.

25 A Fiscal year '22 budget is already in place.

1 I mean, I don't know what the process is
2 for anything else, but I know they are not in
3 the plan or the budget currently.

4 BY MR. MOTT:

5 Q What are the financial requirements of PROMESA
6 that this document is referring to here?

7 MS. DALE: Objection to the form.

8 A Well, it's really in the context of the -- what
9 is listed in the fiscal plan and thereby the
10 budget, which are sort of the financial
11 documents that I'm referring to.

12 BY MR. MOTT:

13 Q So when it says that:

14 "The financial impact of preempted
15 Commonwealth statutes, or portions thereof, is
16 inconsistent with the financial requirements of
17 PROMESA" --

18 -- do you really mean the financial
19 requirements of -- you say the budgets or the
20 plan?

21 A Yes. The budgets, the fiscal plan, are what I
22 am referring to.

23 Q So would it be more clear to say inconsistent
24 with the financial requirements of the budgets
25 and the plan?

1 A I don't know if I can answer that because I feel
2 that the fiscal plan -- and this is sort of the
3 critical driving document from a financial
4 standpoint under PROMESA. So that is sort of
5 what I was referring to in terms of the
6 financial impact; that at the end of the day,
7 the fiscal plan that has been certified by the
8 board under PROMESA, what is that -- you know,
9 what is the financial impact of that relative to
10 the statutes that have been preempted.

11 Q How are you defining that "financial impact"?
12 Impact to whom?

13 A To the government and to, you know, the -- it's,
14 in my view, more of a comparison of not the
15 "who," but the "what" with respect to the
16 statutes' financial impact compared to what is
17 in the fiscal plan in the budget.

18 Q The first basis listed for the third opinion
19 referred to here is:

20 "The appropriations or the appropriations
21 based on mathematical formulas described in each
22 of the Commonwealth statutes at issue."

23 And maybe my --

24 What does it mean by "the appropriations
25 based on mathematical formulas" as opposed to

1 just "the appropriations"?

2 A There are some statutes that call for a certain
3 percentage of general fund revenues to be
4 appropriated.

5 That is an example, for instance, of what
6 you just asked.

7 Q Is that one of the --

8 Those statutes that have the formulas, are
9 those in one of the buckets, the three buckets
10 we're talking about? Is that one of the ways
11 those buckets are categorized or --

12 A No. The buckets are a little bit different, but
13 the individual statutes within the buckets then
14 talk about specific formulas.

15 But the formulas itself are not necessarily
16 the categories of the buckets.

17 Q Taking the next two bases for the third opinion
18 because they seem to be interrelated.

19 The second bases is:

20 "The application of formula appropriations
21 described in the statutes to the revenue sources
22 identified in the statutes to estimate how those
23 specific appropriations would have been in
24 fiscal years 2021 and 2022."

25 MS. DALE: Just misspoke in terms of

1 the plan are consistent with the debt
2 sustainability analysis in the 2021 certified
3 fiscal plan for the Commonwealth" --

4 -- are you basing that opinion on your
5 firsthand experience working the matter since
6 2017 through 2018, 2019, and 2020, or are you
7 basing it off of work that you've done in the
8 last several months, putting together your
9 testimony in connection with the plan
10 confirmation proceedings?

11 MS. DALE: Object to form.

12 A The work around the -- the comparison of that
13 ratio, you know, has been a topic that has been
14 looked at throughout and as, you know, actually
15 laid out in that fiscal plan.

16 So I will say that what I am using is what
17 is in the fiscal plan and the plan of adjustment
18 as on file.

19 BY MR. MOTT:

20 Q Have you come to your opinion that:

21 "The financial obligations provided for in
22 the plan are consistent with the debt
23 sustainability analysis in the 2021 certified
24 fiscal plan for the Commonwealth" --

25 -- since the 2021 certified fiscal plan for

1 the Commonwealth was put on file?

2 A Yes. After it's been put on file.

3 Q And do you recall when the 2021 certified fiscal
4 plan for the Commonwealth was put on file?

5 A I think it was certified in April of 2021.

6 Q And in determining whether or not the financial
7 obligations provided for in the plan are
8 consistent with that certified plan, did you
9 make that determination or support that
10 determination in connection with preparing for
11 your testimony for the plan confirmation
12 proceedings?

13 A Could you ask me that question again, please.

14 Q I don't specifically recall it. Could the court
15 reporter please read it back.

16 (The requested text was read by the
17 reporter.)

18 MS. DALE: Object to form.

19 A It's still hard for me to follow that question.

20 BY MR. MOTT:

21 Q Your opinion that:

22 "The financial obligations provided for in
23 the plan are consistent with the debt
24 sustainability analysis" --

25 -- have you come to that opinion and

1 supported that opinion in connection with
2 drafting your testimony?

3 A Yes. On that particular ratio, yes.

4 Q Thank you.

5 With respect to the third item of your
6 opinion that:

7 "The financial impact of preempted
8 statutes, or portions thereof, is inconsistent
9 with the financial requirements of PROMESA" --
10 -- which we now know is financial
11 requirements of the fiscal plan.

12 (Reporter request for clarification.)

13 MR. MOTT: I'll start over.

14 MS. DALE: I objected, but he's starting
15 over.

16 BY MR. MOTT:

17 Q With respect to your opinion that:

18 "The financial impact of preempted
19 Commonwealth statutes, or portions thereof, is
20 inconsistent with the financial requirements of
21 PROMESA" --

22 -- did you come to that opinion in
23 connection with preparing your testimony in
24 connection with the plan confirmation
25 proceedings?

1 MS. DALE: I'm going to direct you not to
2 answer that question because it intrudes upon
3 our privilege.

4 BY MR. MOTT:

5 Q Mr. Malhotra, are you going to take Ms. Dale's
6 direction?

7 A Yes.

8 Q And your declaration, it includes some fact
9 testimony, I assume, but it also includes some
10 opinion testimony; is that right?

11 A Yes.

12 Q And does it include expert opinion testimony?

13 MS. DALE: Objection. Calls for a legal
14 conclusion. Asked and answered.

15 A I have not been retained as an expert. I'm a
16 nonretained expert.

17 BY MR. MOTT:

18 Q When's the first time you heard that phrase,
19 "nonretained expert"?

20 A A few weeks ago when --

21 MS. DALE: That's the answer. A few weeks
22 ago.

23 BY MR. MOTT:

24 Q And who used that phrase "nonretained expert"?

25 Where did you come to learn that phrase a

1 few weeks ago?

2 A It was either Proskauer or our own counsel is
3 where I probably heard it.

4 Q You don't recall if it was Proskauer or if it
5 was Ms. DeCamp?

6 A I do not.

7 Q Going back to the comments to your first draft,
8 were any of Proskauer's edits to the draft, did
9 any of them touch on your opinion testimony?

10 MS. DALE: I'm going to direct you not to
11 answer that question. It's invading our
12 privilege.

13 MR. MOTT: Could you, Ms. Dale, explain how
14 that's invading your privilege?

15 MS. DALE: No. I don't have to make an
16 explanation to you, Tom.

17 MR. MOTT: Because we're talking about a
18 Rule 26(a)(2)(C) expert fact witness who is
19 putting their witness declaration together for
20 their testimony at trial; so I'm wondering where
21 your privilege assertion is coming from.

22 MS. DALE: We disagree with you.

23 Communications with Mr. Malhotra and his
24 lawyers regarding his testimony are privileged,
25 except to the extent that we gave him facts,

1 data, or assumptions upon which we are telling
2 him to incorporate in his testimony.

3 We had this conversation before, and we
4 have given you anything that -- we represented
5 that if there were communications with facts,
6 data, or assumptions, we would provide those to
7 you. We looked. We didn't find any.

8 So now, the back-and-forth that we've been
9 having over the draft of his declaration is
10 privileged, and we're not going to allow
11 Mr. Malhotra to answer questions about that.

12 I think I've already given some latitude
13 here to allow you to ask some questions about
14 the drafting process because I don't think that,
15 you know, how many drafts there were is
16 necessarily privileged, but, you know, to
17 start --

18 Anyway, that's my position.

19 BY MR. MOTT:

20 Q So, Mr. Malhotra, are you going to take
21 Ms. Dale's direction not to answer my question
22 regarding whether or not Proskauer had any
23 comments with respect to your opinion testimony?

24 A Yes.

25 MR. MOTT: That's all the questions that I

1 have, but I know that there are other
2 participants, including my colleagues from
3 McConnell. I'm not sure if they are on.

4 But to the extent that McConnell has any
5 questions or any of the other participants here
6 have questions or if the oversight board has any
7 questions for Mr. Malhotra, the floor is now
8 open.

9 MS. DALE: Okay. Well, we have no
10 questions for our witness; so I think that
11 closes the deposition.

12 MR. MOTT: Just before we go off the
13 record, I would like the record to reflect that
14 we're reserving all rights with respect to the
15 privilege disputes that have been discussed
16 here.

17 I understand, Ms. Dale, your position, but
18 the DRA parties have a very opposite view of
19 whether or not witness declarations of
20 Rule 26(a)(2)(C) witnesses are within your
21 privilege, given that we're talking about his
22 testimony at trial.

23 And he's not a reporting expert. He's --
24 as you made sure that he knew how to call
25 himself -- a nonretained expert. Those

1 declarations, those drafts are not privileged in
2 our view. So we may be speaking to the Court
3 about it.

4 MS. DALE: Good luck with that. Thanks
5 very much.

6 THE VIDEOGRAPHER: Off the record at
7 2:37 p.m.

8 (Time noted: 3:37 p.m. AST/2:37 p.m. CST.)

9 AND FURTHER THE DEPONENT SAITH NOT.

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EXHIBIT C

From: Stafford, Laura <lstafford@proskauer.com>
Sent: Thursday, October 7, 2021 5:44 PM
To: Mott, Thomas L.; Mervis, Michael T.; Koff, Douglas; Firestein, Michael A.; 'Lizzie M. Portela Fernández'; Arturo J. Garcia-Sota; Mintz, Doug; Jennings, Taleah; Nayuan Zouairabani; 'Alejandro J. Cepeda Diaz'; 'antionette.decamp@ey.com'
Cc: Dale, Margaret A.; Alonzo, Julia D.; Rappaport, Lary Alan; 'rcamara@ferraiouli.com'; Atara Miller; 'hburgo@cabprlaw.com'; Howard R. Hawkins, Jr.; Luis A. Oliver-Fraticelli; Robert S. Berezin; Jonathan D. Polkes; Maria E. Pico; Martin A. Sosland; James E. Bailey III; 'Isepulvado@smlawpr.com'; 'jroach@reedsmith.com'; 'dmonserrate@gmail.com'; 'alan.brilliant@dechert.com'; 'jrapisardi@omm.com'; 'Luis Marini'; 'Carolina Velaz Rivero'; 'Hermann Bauer (Hermann.Bauer@oneillborges.com)'; 'antionette.decamp@ey.com'; Rosen, Brian S.; Carmen D. Conde Torres; Luisa S. Valle Castro; 'Pavel, Ashley'; 'Friedman, Peter'; 'Rapisardi, John J.'; 'McKeen, Elizabeth L.'; 'Imarini@mpmlawpr.com'; Barak, Ehud; 'cvelaz@mpmlawpr.com'; 'Roth, Joseph L.'; Jennings, Taleah; Prather, J. Eric; William Natbony; JOhring; Atara Miller; Adam M. Langley; Martin A. Sosland; Robert S. Berezin; 'Collins, Reed'; 'McGrath, Colin'; Mark C. Ellenberg; Howard R. Hawkins, Jr.; Thomas J. Curtin; Casey J. Servais; Levitan, Jeffrey W.; Triggs, Matthew; Gillespie, Noah; Cooper, Scott P.; Alonzo, Julia D.; 'Joseph, Andrew B'
Subject: RE: Plan Confirmation - Deposition Notices

Tom –

Mr. Herriman is not familiar with, and will not testify regarding, the amount deemed allowed with respect to CW/HTA Claims, as set forth in Section 2.2(a) of the Plan. Mr. Herriman is also not familiar with, and will not testify regarding, the best interests test analysis, as reflected in Exhibit P to the Seventh Amended Disclosure Statement (as amended with respect to PBA only on October 3, 2021). As set forth in the Debtors’ Opening Expert Reports and Disclosures [ECF No. 18097], Mr. Herriman will testify regarding the reasonableness of the assumptions made with respect to the anticipated allowed amount of general unsecured claims against the Commonwealth, ERS, and PBA, which was used as an input to the best interests test analysis.